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| APPLICATION NO. | FILING DATE | FIRST NAMED INVENTOR | ATTORNEY DOCKET NO. | CONFIRMATION NO. |
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| 09/874,476 | 06/04/2001 | Dieter Blaschke | 88265-4038 | 6732 |

28765 7590 02/25/2002

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| EXAMINER |
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TRAN LIEN, THUY

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| ART UNIT | PAPER NUMBER |
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1761


DATE MAILED: 02/25/2002

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Please find below and/or attached an Office communication concerning this application or proceeding.

AS-3

Office Action Summary

| | | |
|--------------------------------------|--|---|
| Application No. 09/874,476 | Applicant(s) Blaschke et al. | |
| Examiner Lien Tran | Art Unit 1761 |  |

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136 (a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on Jun 4, 2001
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11; 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-30 is/are pending in the application.
- 4a) Of the above, claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-5 and 7-30 is/are rejected.
- 7) ☒ Claim(s) 6 is/are objected to.
- 8) ☐ Claims _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are objected to by the Examiner.
- 11) ☐ The proposed drawing correction filed on _____ is: a) ☐ approved b) ☐ disapproved.
- 12) ☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. § 119

- 13) ☐ Acknowledgement is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d).
- a) ☐ All b) ☐ Some* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

*See the attached detailed Office action for a list of the certified copies not received.

- 14) ☐ Acknowledgement is made of a claim for domestic priority under 35 U.S.C. § 119(e).

Attachment(s)

- | | |
|--|--|
| 15) <input type="checkbox"/> Notice of References Cited (PTO-892) | 18) <input type="checkbox"/> Interview Summary (PTO-413) Paper No(s). |
| 16) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 19) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 17) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449) Paper No(s). <u>2</u> | 20) <input type="checkbox"/> Other: |

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1. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless --

(a) the invention was known or used by others in this country, or patented or described in a printed publication in this or a foreign country, before the invention thereof by the applicant for a patent.

2. Claims 1-4, 5, 21-24 and 28 are rejected under 35 U.S.C. 102(a) as being anticipated by brochure on Gourmet Cookies.

The Gourmet Cookies come in as a frozen slab which is pre-cut to provide individual pieces. When baked cookies are needed, the required number of pieces is separated and then placed on a baking tray. The baking is done in a convention oven for 12-15 minutes.

The reference meets the processing steps of providing an uncooked cookie dough sheet or block, separating one or more pieces and baking the pieces to obtain individual baked cookies. The slab has groove on the surface and it is inherent that the dough flows upon baking to form individual cookie. The lines of cutting do intersect as shown on the surface of the slab.

3. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

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4. The factual inquiries set forth in *Graham v. John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:

1. Determining the scope and contents of the prior art.
2. Ascertaining the differences between the prior art and the claims at issue.
3. Resolving the level of ordinary skill in the pertinent art.
4. Considering objective evidence present in the application indicating obviousness or nonobviousness.

5. Claims 7-20,24-25,27,29-30 rejected under 35 U.S.C. 103(a) as being unpatentable over the brochure on Gourmet Cookies.

The brochure does not disclose the amounts and type of ingredients as claimed, the amount of particulate such as chocolate, oat flakes etc..., the size of the groove and refrigerating the dough.

The type of ingredients as claimed are basic cookie dough ingredients; thus, it is obvious the Gourmet cookies dough will contain such ingredients. As to the amounts, this varies with the type of cookies being made; thus, it would have been obvious to vary the amounts of ingredients depending on the type of cookies and the taste, flavor and texture desired. It would also have been an obvious matter of choice to vary the size of the cutting lines. As to the size of the pieces, it would have been obvious to include pieces of any size and to use any vary amount of pieces depending on the flavor and taste desired. This would have been an obvious matter of preference. As to refrigerating, if the product is frozen, it can be refrigerated. It would have been obvious to refrigerate the product if extended storage is not intended. As to claim 26, a depth of about 95%

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of the thickness of the sheet or block means the depth can be greater than 95% which does not define over the precut pieces. The placing of the pieces far apart or close together to form a big mass would have been a matter of preference.

6. Claim 6 is objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

7. Since the Gourmet Cookies dough is precut, there is no suggestion to make the groove or line to have a depth of about 3 to about 50% of the thickness of the dough sheet or block.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Lien Tran whose telephone number is (703) 308-1868. The examiner can normally be reached on Wed-Fri. The fax phone number for the organization where this application or proceeding is assigned is (703) 305-7718.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (703) 308-0661.

February 19, 2002

Lien Tran
LIEN TRAN
PRIMARY EXAMINER
2/19/02